

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Goede et al.

Title: SYSTEM AND METHOD FOR
VISUAL ANNOTATION AND
KNOWLEDGE
REPRESENTATION

Appl. No.: 10/516554

International 5/31/2003

Filing Date:

371(c) Date: 11/30/2004

Patent No.: 7,453,472

Grant Date: 11/18/2008

Examiner: Ryan R. Yang

Art Unit: 2628

Confirmation 7087

Number:

REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT
UNDER 37 C.F.R. §1.705

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicants respectfully request reconsideration of the Patent Term Adjustment (PTA) determined for the captioned patent, which issued on November 1, 2008, as U.S. Patent No. 7,453,472.

The Patent Office determined that the patent was entitled to 460 days of PTA on the basis of the information shown in Exhibit A, attached. Applicants believe that this PTA determination was made in accordance with the “Explanation of 37 CFR 1.703(f) and of the United States Patent and Trademark Office Interpretation of 35 U.S.C. §154(b)(2)(A)” published at 69 Fed.

Reg. 34238 (Jun. 21, 2004). Under that interpretation of the PTA statute, any PTO delay under 35 U.S.C. § 154(b)(1)(A) is deemed to overlap with any 3-year maximum pendency delay under 35 U.S.C. § 154(b)(1)(B), and so, as a practical effect, PTA may be awarded under §154(b)(1)(A) or §154(b)(1)(B), but not both.

On September 30, 2008, the United States District Court for the District of Columbia issued a decision finding that the U.S. Patent and Trademark Office's interpretation of the PTA statute is incorrect. *Wyeth v. Dudas*, Civ. Action No. 07-1492 (JR) (Sep. 30, 2008). The court determined that, under the correct interpretation of the PTA statute, periods of "overlap" are limited to "periods of time . . . [that] occur on the same day." *Wyeth*, slip op. at 8. Thus, a PTO delay under §154(b)(1)(A) overlaps with a delay under §154(b)(1)(B) only if the delays "occur on the same day." *Id.*

Applicants have recalculated PTA for the captioned patent under the court's interpretation of the PTA statute, and have determined that the patent is entitled to 814 days PTA, as shown in attached Exhibit B, which shows the relevant delays under 37 CFR §§1.702(a) and (b), and under 37 CFR §§1.703(a) and (b).

The attached Exhibit B details the circumstances during the prosecution of the application resulting in the patent that constitute a failure to engage in reasonable efforts to conclude processing or examination of such application as set forth in § 1.704.

(a) Total of non-overlapping PTO delay under §154(b)(1)(A) & (B):	872 days
(b) Total Applicant delay:	58 days
Final PTA Determination:	814 days

Applicants therefore respectfully request that the patent be accorded 814 days PTA.

The patent is not subject to a terminal disclaimer.

Payment of the requisite fee is submitted herewith. Should no proper payment be enclosed herewith, as by the credit card payment instructions in EFS-Web being incorrect or absent, resulting in a rejected or incorrect credit card transaction, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741.

However, because this PTA error is due to a Patent Office error in interpreting and applying the PTA statute, a refund of the fee is respectfully requested.

Respectfully submitted,

By 

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Date January 14, 2009

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Patient Term Adjustment Calculation System

Add a new event to this case

Docket Number: 083404-0145
 Application Number: 10/516554
 Patent Number: N/A

	Event Description	Event Date	Days from Filing	PTO Days	Applicant Days
Edit Delete	Application Filing Date	11/30/2004	0		
	14 month From Application date	01/30/2006	426		
Edit Delete	Restriction Requirement	07/02/2007	944		
Edit Delete	Restriction Requirement Response Received at PTO	08/06/2007	979	518	
Edit Delete	Non-Final Office Action	10/30/2007	1,064		
	Non-Final Office Action + 3 months	01/30/2008	1,156		
Edit Delete	Non-Final Office Action Response Received at PTO	03/28/2008	1,214	58	
Edit Delete	Notice of Allowance	07/14/2008	1,322		
	Projected Patent Grant Date	01/20/2009	1,512		
			Totals:	518	58
			PTA:		460

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EXHIBIT A

Patent Term Adjustment Calculation System

Add a new event to this case

Docket Number:083404-0145
Application Number:10/516554
Patent Number:N/A

	Event Description	Event Date	Days from Filing	PTO Days	Applicant Days
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Edit Delete	International Filing Date	05/31/2003	-549		
Edit Delete	National Stage Entry (All 371(c) Requirements Met)	11/30/2004	0		
	PCT National Stage Commencement Date	11/30/2004	0		
	14 month From Application date	01/30/2006	426		
Edit Delete	Restriction Requirement	07/02/2007	944	518	
Edit Delete	Restriction Requirement Response Received at PTO	08/06/2007	979		
Edit Delete	Non-Final Office Action	10/30/2007	1,064		
	3 Year Period Starts	11/30/2007	1,095		
CLOSE WINDOW	Non-Final Office Action + 3 months	01/30/2008	1,156		
ALL CASES	SELECT CASE				
Edit Delete	Non-Final Office Action Rsp. Rcv'd at PTO	03/28/2008	1,214		58
Edit Delete	Notice of Allowance	07/14/2008	1,322		
Edit Delete	Issue Fee Paid	10/08/2008	1,408		
Edit Delete	Patent Grant Date	11/18/2008	1,449	354	
			Totals:	872	58
			PTA:		814

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EXHIBIT B